



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 27503500

Date: AUG. 10, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a marketing director, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merits, as a matter of discretion, a national interest waiver of the EB-2 classification's job offer requirement. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we agree with the Director that the Petitioner did not demonstrate the required "national importance" of her proposed work. Accordingly, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. An advanced degree is defined, in relevant part, as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship

and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.²

II. ANALYSIS

A. EB-2 Immigrant Classification

As stated above, a petitioner must establish eligibility for the EB-2 classification in order to be eligible for a national interest waiver. Here, the Director's decision does not include a determination regarding the Petitioner's eligibility as an individual of exceptional ability.³ Because we agree with the Director's conclusion regarding the Petitioner's eligibility for a national interest waiver, as will be explained below, we reserve the issue of her eligibility for the underlying EB-2 immigrant classification.⁴

B. National Interest Waiver

1. Proposed Endeavor

In a cover letter accompanying the petition, counsel for the Petitioner indicated that she intends to continue to work as the marketing director of her marketing company, [REDACTED] located in [REDACTED] Florida. Specifically, she will use her experience in graphic design and marketing to help small and medium-sized enterprises in the United States "improve operations and achieve better productivity and profitability levels, therefore generating revenues within the country and creating employment opportunities."

In the Form ETA 750B, Statement of Qualifications of Alien, the Petitioner indicated that she obtained a bachelor's degree in graphic design in 1990 from the [REDACTED], and a master's degree in marketing in 1995 from [REDACTED] Spain. She provided that since 2006 she has worked as a marketing director at [REDACTED] a marketing agency in [REDACTED] Venezuela.

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ As the Petitioner emphasizes on appeal, the Director instead determined that the record did not establish the Petitioner's eligibility for the underlying EB-2 visa classification as an advanced degree professional, even though the Petitioner did not claim eligibility as an advanced degree professional either at initial filing or in response to the Director's request for evidence (RFE).

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

In the RFE, the Director observed that the Petitioner did not provide specific insight as to what she intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate her request for a national interest waiver under the *Dhanasar* framework.

Within her RFE response, the Petitioner submitted a business plan,⁵ in which she indicates:

[REDACTED] currently operates as a media monitoring and media intelligence service provider. The company's wide-ranging service portfolio includes services such as brand reputation measurement and management, monitoring of key and business-sensitive topics, communication crisis management, product launch planning and tracking, competitive comparison with competitors, evaluation of the effectiveness of campaigns, and communications.

She states that she and her husband established the company in 2010 to provide media monitoring and intelligence services. She provides that the company has "strong business relationships with suppliers and partners" such as the media monitoring platforms Rebold Spain and Brandwatch and the data integration platforms Vendasta and Datadoo. Its "current prospects" include Newlink Group, Amerant Bank, Banesco USA, Baptist Health South Florida, and LUMU Technologies.

2. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. The first prong focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the evidence did not demonstrate that the endeavor would have national importance, emphasizing that the Petitioner had not shown how her proposed endeavor would have broader implications within her field that would reach beyond clients utilizing her organization's services, or that it would broadly enhance societal welfare at a level commensurate with national importance, consistent with *Dhanasar*. The Director further observed that the record did not demonstrate that the proposed endeavor has significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner maintains that the Director did not give due regard to her recommendation letters; expert letter; articles demonstrating the national importance of her proposed endeavor; evidence of her professional experience and accomplishments; and the staffing and income projections in her company's business plan. For the reasons provided below, we agree with the Director's determination that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

⁵ While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The Petitioner's initial evidence included articles from sources including Ama.org, Deluxe.com, Yourarticlelibrary.com, and Inkbot.com that address the importance of marketing for small and midsize businesses; the significance of marketing to society and the economic development of a country; and the importance of graphic design in marketing. This evidence supports the Petitioner's claim that her proposed endeavor is in an area that has substantial merit, as she proposes to work in tandem with small and midsize companies to improve operations and achieve better productivity and profitability levels, thereby generating U.S. revenues and employment opportunities.

However, in determining national importance, the relevant inquiry is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor, and that "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field." *Id.*

Based on the business plan contained in the Petitioner's RFE response, she has not shown how the media monitoring and media intelligence services she intends to provide to her clients would have broader implications in the marketing field. She broadly states that her media monitoring business will "prove invaluable" to the small and midsize business sector, "and, by extension, the well-being of the nation as a whole," but the record does not provide adequate support for a determination that her specific proposed endeavor will have such a wide-reaching impact.

In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The business plan indicates the Petitioner's company offers monthly subscription services, such as "Media Monitoring, Social-listening, Reputation Management Pro, Advertising Intelligence, Customer Voice, and Social Marketing." But this evidence does not sufficiently show that such benefits, either individually or cumulatively, would reach beyond clients utilizing her company's services to the level of national importance. Nor has she demonstrated that her work would broadly enhance societal welfare at a level commensurate with national importance.

We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* At 890. The business plan includes industry and market analyses, business strategies, financial forecasts and projections, and a description of the company's proposed service offerings and personnel. With respect to future staffing and financial forecasts, the business plan projects that the Petitioner's marketing business would hire seven employees in the first five years of operations; will achieve total revenues of \$711,120 in its first year and \$1,574,623 by its fifth year; and will realize a net profit of \$38,618 in its first year and \$135,853 by its fifth year. The business plan also states that "the Company will lead to the creation of [an] additional 51 indirect jobs according to the multipliers provided by the [Economic Policy Institute.]"

The job creation and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for those projections, they would not establish the national

importance of the proposed endeavor. While the projected income statement indicates that the Petitioner's media monitoring business has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, the Petitioner has not offered sufficient evidence that the areas where her company will operate are economically depressed; that her company would employ a significant population of workers in those areas; or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Without this evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact. As such, the Petitioner has not supported a claim that her proposed endeavor stands to sufficiently extend beyond her customers to impact the marketing field at a level commensurate with national importance.

Moreover, in her personal statements and appellate brief, the Petitioner has placed considerable emphasis on her academic training in graphic design and marketing and her professional experience in those fields. The record also contains recommendation letters from [REDACTED] and its clientele. While important, the Petitioner's expertise acquired through her academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. While these letters demonstrate the Petitioner's past work experience and contributions to her employer, they do not support that her proposed endeavor to work as a director of marketing through her company has "a significant potential to employ U.S. workers" or "substantial positive effects," as claimed.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from an associate professor from [REDACTED] University. He provides that the Petitioner's company will "offer its services to small and medium-sized businesses and assist them to enter the market smoothly and grow their presence through online marketing strategies and market monitoring." He states that the Petitioner's services "[s]haring relevant and up-to-date information with her clients will allow them to well-position their company and create strategies that will be most beneficial to their brand." He relates the above figures pertaining to staffing and financial forecasts contained in the Petitioner's the business plan, which he characterizes as "[s]howing a very steady and growing business."

The input of any professionals in the relevant field or industry is respected and valuable in assessing a claim of a national interest waiver. However, the expert opinion letter does not sufficiently demonstrate that the Petitioner's proposed endeavor has significant potential to employ U.S. workers or otherwise offers "substantial positive economic effects" for our nation contemplated by *Dhanasar*. *Id.* at 890. For example, the professor has not provided any analysis or numerical breakdowns to substantiate how the Petitioner's marketing services would benefit the nation's labor market, economy, and business industry. He has not offered sufficient evidence that the Petitioner's marketing services through her company would enable her clients to employ a significant population of workers in an economically depressed area, or that her endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the professor demonstrated that any increase in the clients' revenue attributable to the Petitioner's marketing services stands to substantially affect economic activity regionally or nationally.

Further, although the professor notes that there is a “remarkable and growing digital marketing demand across industries and sectors” which the Petitioner’s company will address, he has not suggested that the Petitioner’s proposed endeavor would lessen the demand for digital marketers on a scale rising to the level of national importance.

On appeal, the Petitioner submits two of our non-precedent decisions in which each petitioner had submitted a Form I-140 seeking classification as an individual of extraordinary ability and we sustained the appeal. First, as noted, these two petitioners sought employment-based first preference (EB-1) immigrant classification, which is different from the EB-2 immigrant classification sought by the Petitioner in the instant case. Second, neither decision was published as a precedent and, therefore, these decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Because the Petitioner has not established her proposed endeavor has national importance, she is not eligible for a national interest waiver under the *Dhanasar* analytical framework.

On appeal, the Petitioner maintains that she meets the third prong of the *Dhanasar* framework. She also argues that the Director disregarded the regulation contained in 20 C.F.R. § 656.3, making it legally impossible for an entrepreneur to file a labor certification on his or her own behalf. We acknowledge the Petitioner’s claims, but since the identified basis for this decision is dispositive of the Petitioner’s appeal, we will reserve these issues for future consideration should the need arise, and will dismiss the appeal as a matter of discretion.⁶

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.

⁶ *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.